IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1642 OF 2007
WITH
CRIMINAL APPLICATION NO. 1655 OF 2007
WITH
CRIMINAL APPLICATION NO. 1656 OF 2007
WITH
CRIMINAL APPLICATION NO. 1657 OF 2007

Nikhil Ganeshchandra Surana ..Applicant

Vs.

Sanjay Laxmipati Dasari and anr. ..Respondents

Mr. Pankaj Das for applicant.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : September 26, 2007.

P.C.:

1. These four applications seek special leave to appeal under Section 378 (4) of Cr.P.C. against the orders of acquittal passed in four different complaints filed under Section 138 of the Negotiable Instruments Act, 1881 and, therefore, they are being decided by a common order.

. The details of the complaints with dishonoured cheques and the respective amounts are as under:-

	S.T.C. No.	Cheque No.	Cheque Amt.
(a)	2827/02	202201	Rs.44,240/-
(b)	2825/02	202203	Rs.72,842/-
(c)	2824/02	202202	Rs.54,300/-
(d)	2826/02	202204	Rs.47,040/-

2. The learned JMFC at Solapur dismissed the complaints mainly on the following two grounds:-

(a) that the complainant failed to prove that the dishonoured cheques were issued for repayment of debt or any other legal liability and

(b) that the evidence of Power of Attorney Holder cannot be treated as the evidence of the complainant.

. On the second point the trial court has relied upon the decision of this court in the case of G.J. Packaging Private Ltd. and anr. Vs. S.S. Sales and Anr. [2005 (6) A.I.R. Bom. 635]. Be that as it

may, these applications fail even on the first point, namely, that the complainant failed to prove that the dishonoured cheques were issued for the repayment of debt or any other legal liability.

3. It was contended that the complainant had supplied raw material to the accused and the cost of such raw material supplied from 17/12/1999 to 22/1/2000 came to Rs.1,18,432/-. The raw material was supplied for the manufacture of towels and vide the delivery memos at Exhs.31 to 37. On the other hand, the defence of the accused was that he had never any transaction with Shri Nikhil Ganeshchandra Surana or M/s. Jeenendra Textiles. On the contrary, it was contended by the accused that he had the transaction for supply of raw cotton with M/s.R.M. Surana through its Proprietor Shri Ganesh Surana and accordingly by sending the towels to M/s. Kshirsagar Textiles he had completed the transaction. Shri Ganesh Surana had failed to pay the full labour charges and, therefore, there was a dispute between him and Shri Ganesh Surana and consequently the cheques given to Shri Ganesh Surana by way of security were sought to be encashed. The accused has admitted to have signed the cheques

but contended that the cheques were given by way of security. Therefore, the onus of rebuttal under Section 139 of the N.I. Act fell on the accused to establish that the cheques were not issued by him in discharge of debt or any other legally enforceable liability of the complainant. In this regard, the trial court referred to the documents at Exhs.31 to 37 and noted that they do not support the contention that the raw cotton was supplied at the instance of M/s. Jeenendra Textiles or Mr. Nikhil Surana. The witness of the complainant, when shown these documents, admitted that they did not bear the name of Nikhil Surana or M/s. Jeenendra Textiles. Exh.33 was the delivery invoice and all other delivery memos had the endorsement as "through Harish Bub", whereas the delivery memo at Exh.33 had the endorsement as "for Harish Bub Shri R.M. Surana". Thus, these documents went to show that there was nothing on record to prove the supplies made by M/s.Jeenendra Textiles or Mr. Nikhil Surana to the accused. Beyond these documents at Exhs.31 to 37, there was no other document which was relied upon by the complainant to establish his case that the accused owe any debt or any other liability to Shri Nikhil Surana or M/s.Jeenendra

Textiles. On the face of this admitted position in respect of all the four dishonoured cheques, the reasoning set out by the trial court in support of the orders of acquittal cannot be said to warrant reconsideration at the hands of this court.

4. Hence, leave to appeal is refused and consequently the applications are rejected.

(B.H. Marlapalle,J.)